

REMARKS

Claims 1-4 are pending in the application and were last examined. Claims 1-3 have been amended to change the open language “comprising” or “consists essentially of” to the closed language “consists of” or “consisting of”. No prohibited new matter has been added by way of these amendments. In view of the amendments and the following remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

Rejection of Claims 1-4 Under 35 U.S.C. § 101:

Applicants note with appreciation that the Examiner has withdrawn the rejection under 35 USC 101.

Rejection of Claims 1-4 Under 35 U.S.C. § 112:

Claims 1-4 stand rejected under 35 U.S.C. 112 as allegedly failing to comply with the written description requirement. Applicants have amended claim 1 to indicate that the array consists of a plurality of probes, each consisting of one of the sequences listed in SEQ ID NOS 1-124,031 and the array consisting of each of the sequences in SEQ ID NOS 1-124,031. Applicants respectfully request withdrawal of this rejection. Similarly, claims 2 and 3 have been amended to replace “comprises”, “comprising” or “consists essentially of” with “consisting of” or “consists of”. In view of these amendments Applicants respectfully request withdrawal of this rejection.

Rejection of Claims 1-4 Under 35 U.S.C. § 103:

In paragraphs 5 and 6 of the office action the Examiner has maintained the rejection of claims 1-3 as allegedly being unpatentable over dbSNP build 115 (June 1, 2003) or build 103

(April 8, 2002) in view of Venter (US Patent 6,812,339) and the rejection of claim 4 as allegedly being unpatentable over dbSNP build 115 (June 1, 2003) in view of Venter et al., (US Patent 6,812,339) and Lough et al., (US Patent 5,900,481).

In paragraph 7, the Examiner indicates that Applicants' previous arguments regarding these rejections were found unpersuasive because the claims are drawn to an array comprising a plurality of probes and would thus not be limited to a specific set of probes. Applicants believe that the amendments made herein to the claims clarify that the claimed array is limited to an array that has a specific set of probes limited by the sequences recited in SEQ ID NOS 1-124,031, the complements of these sequences or the recited sequences with a mismatch at the central position, and is not more broadly drawn to an array that contains additional probes or probes that contain additional sequences.

As indicated in the previous response, Applicants are claiming a specific set of probes to genotype a specific set of more than 10,000 human SNPs that have been carefully selected from the more than 5 million known common SNPs. There is no teaching in dbSNP, Venter or Lough of the specific set of probes claimed or the specific set of SNPs targeted by the probes. In view of the amendments made to the claims herein and clarifying that the array is limited to a specific set of probes that are directed at a specific set of SNPs, Applicants respectfully request withdrawal of this rejection.

CONCLUSION

In view of the foregoing amendments and remarks, Applicants respectfully request withdrawal of all outstanding rejections and early notice of allowance to that effect. Should the Examiner believe that a telephonic interview would expedite allowance of this application, he is encouraged to contact the undersigned at his convenience.

Application No. 10/681,773

Docket No. 3522.2

Response to Office Action of October 16, 2006

Except for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account No.50-0310. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Dated: January 16, 2007

Respectfully submitted,

/Sandra E. Wells/

Sandra E. Wells

Reg. No. 52,349

Customer No.: 22886

Legal Department

Affymetrix, Inc.

3420 Central Expressway

Santa Clara, CA 95051

Tel: 408/731-5000

Fax: 408/731-5392